SINGLE BENCH (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 5274 OF 2005

PETITIONER:

Santosh Kumar Baspei, S/o- Late Shri L.R.Baspei, Aged About-36 Years, Occupation-Upper Division Clerk at Shahid Nutan Soni Govt. Higher Secondary School Ratanpur, R/o- Ward No.6, Near Madarsa Baba, Ratanpur, Thesil-Kota, Distt.- Bilaspur (C.G.)

P.R. No. 5571/05 Presented by Shri Vinay Pandey dated 24/10/05

VERSUS

RESPONDENT (S):

1. State of Chhattisgarh
   Through it's Secretary
   Department of School Education
   D.K.S. Bhawan Raipur(C.G.)

2. Collector
   Bilaspur (C.G.)

3. District Education Officer
   Bilaspur (C.G.)

RECEIVED-COPY 24/10/05 CLERK to A. G. BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS / CERTIORARI ETC. OR DIRECTION / ORDER IN THE LIKE NATURE.

(28)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

**मामला क्रमांक** ....W.P. 5274/05 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

| आदेश का दिनांक तथा आदेश क्रमांक | हस्ताक्षर सहित आदेश | कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश |
|---|---|---|
| | **27/10/2005**<br>Shri Vinay Pandey, learned counsel for the petitioner.<br>Shri Pankaj Shrivastava, Panel Lawyer for respondent Nos.1,2& 3.<br>Heard.<br>By way of this Writ Petition filed under Article 226/227 of the Constitution of India, the petitioner, who is presently working as an Upper Division Teacher in a Local Institution at Ratanpur, and has been transferred from Ratanpur to Pathariya has challenged the validity of his transfer order dated 31/8/2005 (Annexure P-1).<br>Learned counsel for the petitioner presses the ground that the children of the petitioner are studying in the Local Institution and the mid-session transfer is bad in law. Except this no other ground has been pressed in this petition.<br>The law in relation to interference by the Courts in the matter of transfer is now well settled. The Apex Court while dealing with the matter of ***Kendrikya Vidyalaya Sangathan -Vs- Damodar Prasad Pandey, 2004 AIR SCW 5563*** observed that the transfer which is an incidence of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated by *mala-fide* or infraction of any prescribed norms of principles governing the transfer. (please see *Ambani Kanta Ray -Vs- State of Orissa - 1995 (Suppl.) 4 SCC 169*). Unless the order of transfer is vitiated by *mala* | |

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आदेश पत्रक (पूर्वानुबद्ध)

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*fide* or is made in violation of operative guidelines, the Court cannot interfere with it. *(See Union of India -Vs- S.L. Abbas AIR 1993 SC 2444)*. Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is vitiated by mala fide or is made in violation of operative any guidelines or rules the Courts should not ordinarily interfere with it. In ***Union of India & others -Vs- Janardan Debanath & another (2004) 4 SCC 245***, it was observed as follows:

> *"No Government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala-fide exercise or stated to be in violation of statutory provisions prohibiting any such transfer, the Courts or the Tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employee/management, as against such order passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in **National Hydroelectric Power Corpn. Ltd. -Vs- Shri Bhagwan (2001) 8 SCC 574.***

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आदेश पत्रक (पूर्वानुबद्ध)

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|---|---|---|
| | Having considering the facts and circumstances of this case particularly considering the circumstance that no malafides have been pointed out nor it has been pointed out as to how the transfer order is against the statutory rules, I am not inclined to interfere in such order of transfer.<br>The petition has not merit and the same is dismissed.<br>However, the petitioner is free to file representation before the concerned authority.<br>C.C. as per rules.<br>**Sd/-**<br>**Sunil Kumar Sinha**<br>**Judge** | |